

Calendar No. 915

90TH CONGRESS }
1st Session }

SENATE

{
REPORT
No. 931

LEGISLATIVE COUNSEL
FILE COPY

SIMPLIFYING LAWS RELATING TO MEMBERS OF THE
ARMY, NAVY, AIR FORCE, AND MARINE CORPS

DECEMBER 12, 1967.—Ordered to be printed

Mr. CANNON, from the Committee on Armed Services,
submitted the following

R E P O R T

[To accompany H.R. 8547]

The Committee on Armed Services, to which was referred the bill (H.R. 8547) to amend title 10, United States Code, to simplify laws relating to members of the Army, Navy, Air Force, and Marine Corps, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

This bill would simplify and make uniform a variety of personnel laws applicable to the Armed Forces.

BACKGROUND

Many of the personnel laws incorporated in title 10 of the United States Code were enacted before the establishment of the Committee on Armed Services and the Department of Defense. Experience since 1947 has shown that there are many differences and variations in the personnel laws of the Armed Forces for which there is no identifiable need or justification. Consequently, more than 3 years ago the Department of Defense initiated a project that had as its principal objective making title 10 clear and simple by identifying (1) separate statutes applicable to different Armed Forces that could be consolidated in the General Military Law subtitle of title 10; (2) archaic provisions of law that have no current or foreseeable future application; and (3) variations in personnel laws for which there is no justification. The bill covers such subjects as discharges and separation procedures, miscellaneous rights and benefits, uniforms, enlistments, and periods of active duty.

One example of the kind of improvement sought is that under existing law the Army and the Air Force may accept original enlistments for periods of 2, 3, 4, 5, or 6 years. The Navy and the Marine Corps may accept enlistments for the duration of a person's minority or for periods of 2, 3, 4, or 6 years. The proposed solution is to extend authority for minority enlistments and for 5-year enlistments to all the Armed Forces by enacting one common provision authorizing enlistments for the duration of minority and for 1, 2, 3, 4, 5, or 6 years. The separate and dissimilar provisions would be repealed.

Another example of the uniformity that would be attained under this bill is that under current law a male minor may enlist in the Army or the Air Force at the age of 17 with the consent of his parents. In contrast, the Navy law on minority enlistments prescribes a minimum age of 14. Since this latter age is an anachronism that the Navy does not use, the proposed new law will establish a minimum age of 17 for enlistments in any armed force.

INVOLUNTARY EXTENSIONS

The bill is not designed to make substantive changes in the law, but there is one substantive change relating to the involuntary extension of enlistments and other periods of active duty. Under present law the Secretary of the Navy has discretionary authority in time of war or national emergency to extend enlistments involuntarily for such periods as he considers necessary. Since the Korean emergency declared in December of 1950 is still in effect, this authority was used in 1965 to extend enlistments of some members of the Navy and the Marine Corps for 4 months. In contrast, the authority for the Secretaries of the Army and the Air Force to extend enlistments is limited to periods of declared war.

As originally proposed by the Department of Defense, this bill would have made the discretionary authority of the Secretary of the Navy to extend enlistments in time of national emergency available to the Secretaries of all the military departments. The bill was amended in the other body to eliminate the discretionary authority of the Secretary of the Navy to extend enlistments in time of national emergency, and to apply to all the Secretaries of the military departments a provision of law limiting the authority for involuntary extensions to periods of war. The amended version also authorizes the President, after his determination that the national interest so requires, to extend enlistments when Congress is not in session or those expiring within 30 days after Congress reconvenes. Extensions under this authority could be for not more than 6 months and they could run for not more than 60 days after the next Congress reconvenes. These limitations would give the Congress an opportunity to consider whether it agreed with the need for the extensions. The Congress has readily provided needed authority in this area when the requirement clearly existed, as in the Berlin and Cuban crises.

OBJECTIVE

Superficially the bill is lengthy and complex since it contains provisions revising many sections of title 10, United States Code, that deal with virtually the whole field of military personnel administration. Despite this apparent complexity the purposes of the bill are

simplicity and uniformity. Enactment of the bill should make it easier for the Department of Defense to work with the body of law governing personnel administration and it should contribute to better understanding of military personnel administration by eliminating unjustifiable differences in personnel administration practices. The bill is in the nature of a restatement of the law and is not intended to present new issues of policy.

COST

Enactment of this bill will not result in any increased cost to the Government.

SECTIONAL ANALYSIS

SECTION 1. ACTIVE DUTY

Subsection (a)(1)(A) would add new sections 671a and 671b to chapter 39 of title 10, United States Code, "Active Duty". The proposed new section 671a restates sections 3492 and 8492, law governing the Army and Air Force, to extend their applicability to the Navy and the Marine Corps, which have no similar statutory provisions. The new section would automatically extend the period of active service of any member of the Army, Navy, Air Force, and Marine Corps for the duration of any war in which the United States may be engaged, and for 6 months thereafter. It would, therefore, fill a hiatus in existing Navy and Marine Corps law, by providing for the automatic extension of the periods of active service of officers of these services in time of war. The new section is also made applicable to the Coast Guard upon the recommendation of the General Counsel of the Treasury that "general military law applicable to the Armed Forces should also be applicable to the Coast Guard." Consequently, other sections of the bill generally applicable to the Army, Navy, Air Force, and Marine Corps, have also been made applicable without further specific comment in these notes, to the Coast Guard. The proposed new section 671b fills a gap in existing law to authorize the President, when he determines that the national interest so requires, to extend enlistments or other periods of active duty when the Congress is not in session, having adjourned sine die, if those terms of service otherwise would expire before the 30th day after the Congress next convenes or reconvenes. In no case may any such extension run beyond 60 days after the Congress next convenes or reconvenes.

Subsection (a)(1)(B) would effect a technical amendment in the analysis of chapter 39 to reflect the addition of section 671a.

Subsection (a)(2) would repeal sections 3492 and 8492 which are incorporated in the revised section 671a.

Subsection (a)(3) would effect a technical amendment in the analysis of chapter 341 of title 10, United States Code, to reflect the repeal of section 3492.

Subsection (a)(4) would effect a technical amendment in the analysis of chapter 841 to reflect the repeal of section 8492.

Subsection (b) would repeal section 3493, which provides that the President may order commissioned officers of the Army Reserve to active duty with the Corps of Engineers in such number and for such time as may be necessary for the performance of the functions of the Corps of Engineers. This section, which is derived from the act of

June 26, 1936 (49 Stat. 1974), may be considered superseded by provisions of the Armed Forces Reserve Act of 1952, as amended, now codified in 10 U.S.C. 672-675, 10 U.S.C. 677, 10 U.S.C. 682, and 10 U.S.C. 685, which govern the voluntary and involuntary recall to active duty of members of the Reserve components, and the types of duty to which they may be assigned. Subsection (b) would also effect a technical amendment in the analysis of chapter 341 of title 10, United States Code, to reflect the repeal of section 3493.

SECTION 2. ENLISTMENTS

Subsection (a)(1) would amend chapter 31 of title 10, United States Code, which governs enlistments in the Armed Forces, as indicated below.

Subsection (a)(1)(A) would redesignate section 501 as section "502".

Subsection (a)(1)(B) would add 10 new sections to the chapter, sections 501, 503-509, and 518-519, which are discussed below.

Sections 3251 and 8251 of title 10, United States Code, provide that for the purpose of the chapters dealing with enlistments in the Regular Army and Regular Air Force, "enlistment" means original enlistment or reenlistment. There are no comparable provisions for the Navy and Marine Corps, although some of the historical and revision notes for chapter 537 of title 10, relating to enlistments in the naval service, clearly show that, for the purpose of some sections of that chapter, the word "enlistment" includes reenlistment. Section 501 is a proposed new section to be added to subtitle A of title 10, United States Code, to apply uniformly to enlistments in the Regular Army, Regular Navy, Regular Air Force, and Regular Marine Corps.

Sections 3255, 5531(a), and 8255 of title 10, United States Code, provide that the Secretary of the military department concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, and Regular Marine Corps. Section 503 is a proposed new section to be added to subtitle A of title 10, United States Code, to apply uniformly to enlistments in the Regular Army, Regular Navy, Regular Air Force, and Regular Marine Corps.

Sections 3253(a) and 8253(a) of title 10, United States Code, provide that no person who is insane, intoxicated, or a deserter from an Armed Force, or who has been convicted of a felony, may be enlisted or mustered into the Army or Air Force. However, the Secretary of the Army or the Secretary of the Air Force may authorize exceptions, in meritorious cases, for the enlistment or muster into the Army or Air Force of deserters and persons convicted of felonies. Clauses (3), (4), and (5) of section 5532 of title 10, United States Code, prohibit the enlistment of a person in the naval service if that person is insane, is intoxicated, or has deserted in time of war from any of the Armed Forces unless, in time of war, his enlistment is permitted by such authority as the Secretary of the Navy designates. Section 504 is a proposed new section to be added to subtitle A of title 10, United States Code, prescribing uniform qualifications of this nature for the enlistment in the Army, Navy, Air Force, and Marine Corps. The broader Army and Air Force prohibition against the enlistment of deserters from an Armed Force and the additional Army and Air Force prohibition against the enlistment of persons convicted of felonies is extended to the Navy and Marine Corps.

Sections 3256(a) and 8256(a) of title 10, United States Code, provide that the Secretary of the Army or the Secretary of the Air Force may accept original enlistments in the Regular Army or Regular Air Force of qualified, effective, and able-bodied persons who are not less than 17 years of age in the case of male persons and not less than 18 years of age in the case of female persons, not more than 35 years of age. Clauses (1) and (2) of section 5532 of title 10, United States Code, provide that the enlistment of a person in the naval service is prohibited if that person is a male and under 14 years of age or is a female and under 18 years of age. Sections 3256(a) and 8256(a) of title 10 further provide that no male person under 18 years of age, or female person under 21 years of age, may be originally enlisted in the Regular Army or Regular Air Force without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control. Section 5533 of title 10 provides that a male person at least 14 and under 18 years of age, and a female person at least 18 and under 21 years of age, may be enlisted in the naval service if he or she has the consent of his or her parents or guardian. Section 505(a) is a proposed new section to be added to subtitle A of title 10, United States Code, prescribing a uniform age for enlistments in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.

Sections 3256(d) and 8256(d) of title 10, United States Code, provide that subject to subsection (e) of those sections (which relates to grade upon reenlistment), a person is enlisted in the Regular Army or Regular Air Force in the grade prescribed by the Secretary of the Army or the Secretary of the Air Force. Section 5534 of title 10, United States Code, provides that enlistments in the naval service may be made in such grades or ratings as the Secretary of the Navy prescribes. Section 505(b) is a proposed consolidation of these provisions, to be placed in subtitle A of title 10, United States Code.

Sections 3256(a) and 8256(a) of title 10, United States Code, provide that the Secretary of the Army or the Secretary of the Air Force may accept original enlistments in the Regular Army or Regular Air Force for periods of 2, 3, 4, 5, or 6 years. Section 5534 of title 10, United States Code, provides that enlistments may be made in the Regular Navy, of male persons under 18 years of age for the duration of their minority and of men at least 18 years of age for a term of 2, 3, 4, or 6 years; in the Regular Marine Corps of male persons for the duration of their minority or for a term of 2, 3, 4, or 6 years; and in the Regular Navy or the Regular Marine Corps, of female persons for a term of 2, 3, 4, or 6 years. Section 505(c) is a proposed new section prescribing uniform periods of enlistments for the four services which will be placed in subtitle A of title 10, United States Code.

Section 3256(a) of title 10, United States Code, specifies that female persons may be enlisted in the Regular Army only in the Women's Army Corps. Section 505(d) is a proposed new section to be added to subtitle A of title 10, United States Code, which incorporates this provision in the section governing qualifications.

Sections 3256(b) and 8256(b) of title 10, United States Code, provide that the Secretary concerned may accept reenlistments in the Regular Army or Regular Air Force, as the case may be, for periods of 3, 4, 5, or 6 years. However, a person who last served in one of the highest three enlisted grades may be reenlisted for an unspecified period on a career basis. No age limitation applies to reenlistments. No enlisted member is entitled to be reenlisted for a period that would

expire before the end of his current enlistment. There is no comparable provision for the Navy and Marine Corps. Section 505(e) is a proposed new section to be added to subtitle A of title 10, United States Code to provide for uniform reenlistment periods of 2, 3, 4, 5, or 6 years for the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. The Army and Air Force provisions pertaining to age and reenlistments for unspecified periods on a career basis are deleted.

Sections 3256(c) and 8256(c) of title 10, United States Code, provide that enlistments in the Regular Army or Regular Air Force in effect at the outbreak of a war or entered into during a war, unless sooner terminated by the President, continue in effect until 6 months after the termination of that war. Section 5538 of title 10, United States Code, provides that the Secretary of the Navy may extend enlistments in the Regular Navy and the Regular Marine Corps in time of national emergency declared by the President for such period as he considers necessary in the public interest; that each member whose enlistment is extended under this section shall be discharged not later than 6 months after the end of the war or national emergency, unless he voluntarily extends his enlistment; and that the substance of this section shall be included in the enlistment contract of each person enlisting in the Regular Navy or the Regular Marine Corps. An item in the emergency legislative program provides that enlistments in effect at the beginning of a war, or of a national emergency declared by Congress or the President, or entered into during such a war or emergency, unless sooner terminated by the Secretary concerned, continue in effect until 6 months after the termination of that war or emergency. Section 506 is a proposed new section prescribing uniform authority for the extension of enlistments in time of war to be placed in subtitle A of title 10, United States Code.

Sections 3262, 5537, and 8262 provide that an enlisted member of the Army, Navy, Air Force, or Marine Corps whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment or until it is determined that recovery to that extent is impossible. Section 507 is a proposed new section which incorporates these provisions.

Sections 3253(b) and 8253(b) of title 10, United States Code, provide that no person whose service during his last term of enlistment was not honest and faithful may be reenlisted in the Army or Air Force. However, the Secretary of the Army or the Secretary of the Air Force may authorize the reenlistment or muster into the Army or Air Force of such a person if his conduct after that service has been good. There are no comparable provisions for the Navy and Marine Corps. Section 508(a) is a proposed new section prescribing uniform qualifications for reenlistment in the Army, Navy, Air Force, and Marine Corps, to be placed in subtitle A of title 10, United States Code.

Sections 3256(e) and 8256(e) of title 10, United States Code, provide that a person who, upon his discharge from the Regular Army or Regular Air Force, is recommended for reenlistment is entitled to be reenlisted in the grade held by him when discharged, if he applies therefor within a period specified by the Secretary concerned, but not later than 3 months after his discharge. A person discharged because of

acceptance of his resignation is not entitled, upon reenlistment, to the grade held by him when discharged. Section 508(b) is a proposed new section to be added to subtitle A of title 10, United States Code, which provides that reenlistments in a Regular component may be accomplished under such regulations as the Secretary of the military department concerned may prescribe.

Sections 3256(f) and 8256(f) of title 10, United States Code, provide that those sections do not deprive a person of any right to be reenlisted in the Regular Army or Regular Air Force, as the case may be, under any other provision of law. Section 508(c) is a proposed new section to be added to subtitle A of title 10, United States Code, which extends this provision to reenlistments in the Regular Navy and Regular Marine Corps.

Sections 3263(a) and 8263(a) of title 10, United States Code, provide that under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of the Army or Air Force may be extended, with his written consent, for a period of less than 1 year from the date of the expiration of his existing enlistment. Section 5539(a) of title 10, United States Code, provides that under such regulations as the Secretary of the Navy may prescribe, a member of the Regular Navy or Regular Marine Corps may extend or reextend his enlistment by written agreement for less than 1 year or for a period of 1, 2, 3, or 4 full years; however, the total of all such extensions of an enlistment may not exceed 4 years. Section 509(a) is a proposed new section to be added to subtitle A of title 10, United States Code, prescribing that a term of enlistment in the Army, Navy, Air Force, or Marine Corps may be voluntarily extended or reextended for any period. However, the total of all such extensions of an enlistment may not exceed 4 years.

Sections 3263(c) and 8263(c) provide that the extension under those sections of an enlistment in the Army or Air Force, as the case may be, does not deprive the member, upon discharge from that enlistment, of any right, privilege, or benefit to which he would have been entitled, at the expiration of the term, if it had not been so extended. Section 5539(c) provides that a member of the Regular Navy or Regular Marine Corps when discharged from an enlistment that has been extended under that section, has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended. Section 509(b) is a proposed new section which incorporates these provisions into a single subsection.

Sections 3252 and 8252 of title 10, United States Code, provide that temporary enlistments may be made only in the Army or Air Force, as the case may be, without specification of component. There is no comparable provision for temporary enlistments in the Navy and Marine Corps. Section 518 is a proposed new section to be added to subtitle A of title 10, United States Code, which extends authority to effect temporary enlistments to the Navy and Marine Corps.

Sections 3254 and 8254 of title 10, United States Code, provide that temporary enlistments in the Army or Air Force, as the case may be, entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus 6 months; and that only persons at least 18 years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments. There is no comparable

provision for the Navy and Marine Corps. Section 519 is a proposed new section to be added to subtitle A of title 10, United States Code, which extends this provision governing temporary enlistments to the Navy and Marine Corps.

Subsection (a)(1)(C) is a technical amendment which would add to the analysis of the chapter 11 new items, reflecting the redesignation of section 501 as section "502" and the addition of the proposed new sections.

Subsection (a)(2)(A) would amend section 3253 of title 10, United States Code, by restating subsection (c), which has not been transferred to subtitle A of title 10 and extended to the Navy and Marine Corps by the proposed amendments. Subsections (a) and (b) of section 3253 are incorporated in proposed sections 504 and 508, respectively.

Subsections (a)(2) (B) and (C) would repeal provisions in chapter 333 that are incorporated in the proposed new sections and would also make the technical amendment to the analysis of that chapter to reflect the repeal of those provisions.

Subsection (a)(3) would repeal provisions in chapter 537 that are incorporated in the proposed new sections and also make the necessary technical amendment to the analysis of that chapter to reflect the repeal of those provisions.

Subsection (a)(4)(A) would amend section 8253 of title 10, United States Code, by restating subsection (c), which has not been transferred to subtitle A of title 10 and extended to the Navy and Marine Corps by the proposed amendments. Subsections (a) and (b) of section 8253 are incorporated in proposed sections 504 and 508, respectively.

Subsections (a)(4) (B) and (C) would repeal provisions in chapter 833 that are incorporated in the proposed new sections and also make the necessary technical amendment to the analysis of that chapter to reflect the repeal of those provisions.

Subsection (b) would repeal sections 5531(b) and 5535 of title 10, United States Code, which are discussed below.

Section 5531(b) of the Navy subtitle of title 10, United States Code, which authorizes the use of advertising agencies in connection with recruiting for the Marine Corps, is repealed as unnecessary.

Section 5535 of the Navy subtitle of title 10, United States Code, which relates to evidence of age for certain enlistments of minors, is repealed as archaic.

Subsection (b) would also effect a technical amendment in the analysis of chapter 537 of title 10, United States Code, to reflect the repeal of section 5531(b), the only remaining provision of that section, and of section 5535.

Subsection (c) would revise section 906 of title 37, relating to the effect of extension of enlistments on pay and allowances, to reflect the repeal of sections 3263, 5539, and 8263 of title 10 and the incorporation of the substance of those sections into new section 509 of title 10.

SECTION 3. DISCHARGE AND SEPARATION

Subsection (a)(1) would amend chapter 59 of title 10, United States Code, which governs separation of military personnel, as indicated below.

Subsection (a)(1)(A) would add at the end of the chapter four new sections, section 1169-1172, which are discussed below.

Proposed section 1169 would restate, in a single section, sections 3811(b) and 8811(b) of the Army and Air Force subtitles, and include in the revised provisions, the Navy and Marine Corps which have no counterpart provisions. The new section, which is limited to enlisted members of the *regular* components of these services, would provide that no such member may be discharged before the expiration of his term of service except (1) as prescribed by the appropriate Secretary; (2) pursuant to the sentence of a general or special court-martial; or (3) as otherwise provided by law. As indicated in the revision notes, sections 3811(b) and 8811(b), which were originally enacted in 1920, most recently restated in 1948, and technically amended in 1950, pertained to enlisted persons "lawfully inducted", and were codified to apply to all enlistees. The sections are not, however, restated as to reserve enlistees, since the Armed Forces Reserve Act of 1952 pre-empted the field as to such members, and 10 U.S.C. 1162(a), 1163(b), and 1163(c), which codify pertinent provisions of that law, fully cover the subject matter.

Proposed section 1170 would restate, in simplified and combined form, existing law governing minority discharges of regular enlisted members of the Army, Navy, Air Force, and Marine Corps (10 U.S.C. 3816, 6293, and 8816). Under the new section a minority discharge would be granted, upon application to the Secretary concerned, made by the parents or guardian of the member within 90 days after enlistment, if the member concerned is then under 18 years of age, and enlisted without the written consent of a parent or guardian. The existing provisions of 10 U.S.C. 6293(a), insofar as they pertain to reserve enlisted members, are not restated, since the source of law, section 1 of the act of August 18, 1941, may be considered to have been superseded by section 248 of the Armed Forces Reserve Act of 1952, the pertinent provisions of which are now codified in the second sentence of 10 U.S.C. 1162(a). The existing provisions of 10 U.S.C. 6293(b) and (c), which relate to minority discharges of regular members enlisted under 10 U.S.C. 5535, are not restated since an accompanying legislative proposal provides for the repeal of 10 U.S.C. 5535.

Proposed section 1171 would restate provisions of existing law governing the early discharge of enlisted members of the Regular Navy and extend those provisions to all four military services (10 U.S.C. 6295). The revised section would provide that under regulations prescribed by the appropriate Secretary, and approved by the President, any regular enlisted member of the Army, Navy, Air Force, or Marine Corps may be discharged within 3 months before the expiration of his enlistment or extended enlistment without the loss of any right, privilege, or benefit that he would have had if he had completed his obligated period of service, except that the member is not entitled to pay and allowances for any period not served. (See 10 U.S.C. 6295.)

Proposed section 1172 would restate provisions of existing law governing the discharge of persons serving under temporary enlistments in the Army or Air Force entered into in time of war or emergency declared by Congress (10 U.S.C. 3812, 8812). Proposed section 518 would extend the authority for temporary enlistments to the Navy and the Marine Corps, and proposed section 1172 would extend accordingly the authority to discharge from those enlistments.

Subsection (a)(1)(B) is a technical amendment which would add to the analysis of the chapter four new items, reflecting the proposed new sections 1169-1172.

Subsection (a)(2) would repeal those sections of title 10 which are incorporated in the proposed new sections.

Subsection (a)(3) would effect a technical amendment in chapter 361 to reflect the repeal of sections 3812 and 3816.

Subsection (a)(4) would affect a technical amendment in the analysis of chapter 569 to reflect the repeal of sections 6293 and 6295.

Subsection (a)(5) would effect a technical amendment in the analysis of chapter 861 to reflect the repeal of sections 8812 and 8816.

Subsection (b)(1) would repeal sections 3450, 3811(a), 3813, 3815, 6291, 6296, 6298, 6409, 8450, 8811(a), 8813, and 8815 of title 10, United States Code. These sections are discussed below.

Section 3450 of the Army subtitle of title 10, United States Code, like sections 6409 and 8450, the counterpart sections in the Navy and Air Force subtitles, erroneously codifies section 18 of the Warrant Officer Act of 1954 as applying to temporary warrant officers. Section 18, which is restated almost verbatim in the three cited sections, provided that in time of war or national emergency declared after May 29, 1954, the President may suspend the operation of any provision of law relating to the promotion or mandatory retirement or separation of warrant officers of the Armed Forces. It may be noted parenthetically that section 6409 only restates that portion of the source law which relates to mandatory elimination. Section 18 of the 1954 act should not have been construed as applicable to "temporary" warrant officers, who are not subject to mandatory retirement or separation and whose promotion is governed entirely by regulations prescribed by the appropriate Secretary, which regulations can be drafted to make allowance for any emergency situation. (See 10 U.S.C. 3449, 10 U.S.C. 5787(c), and 10 U.S.C. 8449.)

Section 3811(a), which provides that a discharge certificate shall be given to each lawfully inducted or enlisted member of the Army upon his discharge, is repealed as unnecessary, since the subject matter of the section is adequately covered by 10 U.S.C. 1168(a), which governs the same subject matter, and extends to all members of the Armed Forces.

Section 3813, which authorizes dependency discharges of enlisted members of the Army, is repealed as unnecessary, since proposed new 10 U.S.C. 1169 would provide ample authority for the issuance of regulations, by the appropriate Secretary, authorizing such discharges.

Section 3815, which relates to the resignation of members of the Army enlisted on a career basis, is repealed, since the authority to enlist on this basis would be repealed.

Section 6291, which provides that honorable discharges, in the form prescribed by the Secretary of the Navy, may be granted to enlisted members of the naval service, is also repealed as unnecessary. The proposed new 10 U.S.C. 1169 would provide ample authority for the issuance of regulations governing all types of discharges.

Section 6296 provides that the Secretary of the Navy, under conditions prescribed by him, may grant a furlough without pay to any enlisted member of the Regular Navy for the unexpired term of his enlistment; but that in time of war or national emergency a member so furloughed may be recalled to serve until his enlistment expires. The section, which in the past has been used to permit a member to render

assistance to his family in emergency situations, is repealed as unnecessary, since the objectives thereof can be achieved under regulations authorizing leave without pay under such circumstances.

Section 6298 provides that the Secretary of the Navy may permit any person honorably discharged from the naval service to live at any naval receiving station while he is eligible for a reenlistment bonus; and further provides that any person so residing is entitled to a ration, and is subject to such regulations as the Secretary or other competent authority prescribes. The section is repealed as obsolete.

Section 6409, which is discussed under section 3450 above, is repealed for reasons there stated.

Section 8450, which also is discussed under section 3450 above, is repealed for the reasons there stated.

Section 8811(a), which covers Air Force enlistees, but is otherwise identical in import to section 3811(a), discussed above, is repealed for the same reasons that are given for the repeal of the latter section.

Section 8813, which covers Air Force enlistees, but is otherwise identical in import to section 3813, discussed above, is repealed for the same reasons given for the repeal of the latter section.

Section 8815, which covers Air Force enlistees, but is otherwise identical in import to section 3815, discussed above, is repealed for the same reasons that are given for the repeal of the latter section.

Subsection (b)(2) would effect a technical amendment in the analysis of chapter 339 of title 10, United States Code, to reflect the repeal of section 3450.

Subsection (b)(3) would effect a technical amendment of the analysis of chapter 361 to reflect the repeal of section 3811(a), the only remaining provision of that section, and of sections 3813 and 3815.

Subsection (b)(4) would effect a technical amendment in the analysis of chapter 569 to reflect the repeal of sections 6291, 6296, and 6298.

Subsection (b)(5) would effect a technical amendment in the analysis of chapter 573 to reflect the repeal of section 6409.

Subsection (b)(6) would effect a technical amendment in the analysis of chapter 839 to reflect the repeal of section 8450.

Subsection (b)(7) would effect a technical amendment in the analysis of chapter 861 to reflect the repeal of section 8811(a), the only remaining provision of that section, and of sections 8813 and 8815.

Subsection (c) is a savings provision to allow persons serving under enlistments for unspecified periods on a career basis in the Army and the Air Force to continue so to serve and to be discharged in accordance with the law in effect before the act is effective. This is necessary, since the authority for enlistment for unspecified periods on a career basis would be repealed without being replaced by any comparable provision.

SECTION 4. DETAILS AND DUTIES

Subsection (a)(1) would amend chapter 41 of title 10, United States Code, as indicated below.

Subsection (a)(1)(A) would insert a new section 711(a), which would authorize the detailing of officers of the Army, Navy, and Air Force to the American National Red Cross. At present, two sections of title 10 authorize such details. Section 3539, which governs the Army authorizes the detailing, to the service to the Armed Forces division of the American National Red Cross, of not more than five commissioned officers of the Army Medical Service. The section, in addition,

provides authority under which a commissioned officer of the Medical Corps of the Army may be detailed to be in charge of the first aid department of the American National Red Cross. Under the more restrictive terms of section 5987, which governs the Navy, one or more officers in the Medical Corps of the Navy may be detailed for duty with the service to the Armed Forces division of the American National Red Cross. No authority is provided for detailing an officer to the first aid department of the American National Red Cross.

The purpose of the new section is to combine the provisions of existing law, eliminating variances, and to bring within the purview of the revised law Air Force officers designated in the same specialist fields. In general, this is accomplished by incorporating the less restrictive terms of the Army law, and making the revised section applicable to the Army, Navy, and Air Force.

Subsection (a)(1)(B) is a technical amendment which would insert the necessary new item in the chapter analysis.

Subsection (a)(2) would repeal sections 3539 and 5987.

Subsection (a)(3) would effect a technical amendment in the analysis of chapter 343 of title 10, United States Code, to reflect the repeal of section 3539.

Subsection (a)(4) would effect a technical amendment in the analysis of chapter 553 of title 10, United States Code, to reflect the repeal of section 5987.

Subsection (a)(5)(A) would add a new section 973 to chapter 49, subtitle A of title 10, United States Code, "Miscellaneous Prohibitions and Penalties." The proposed section restates the substance of 10 U.S.C. 3544 and 8544, "Duties: regular officers; performance of civil functions restricted," respecting the Army and Air Force, to extend applicability of those sections to the Navy and Marine Corps which are not similarly restricted. The proposed subsection (a) prohibits an officer on the active list from accepting employment under certain conditions, while proposed subsection (b) prohibits an officer on the active list from holding a civil office, except as otherwise provided by law, subject to termination of his military appointment.

Subsection (a)(5)(B) would effect a technical amendment to the analysis of chapter 49 to reflect the addition of new section 973.

Subsection (a)(6) would repeal sections 3544 and 8544, the substance of which is incorporated in the proposed new section 973.

Subsection (a)(7) would amend section 3017(b) to change a reference to section 3544 to a reference to section 973, since the substance of the former section is to be restated in the latter section. Subsection (a)(9) makes a similar change to section 8017(b).

Subsection (a)(8) amends section 5036 relating to succession to the duties of the Secretary of the Navy to incorporate into that section a provision similar to that contained in sections 3017(b) and 8017(b) and made necessary by new section 973(b), above (subsection (a)(5)(A)).

Subsection (a)(10) would effect a technical amendment to the analysis of chapter 343 of title 10, United States Code, to reflect the repeal of section 3544.

Subsection (a)(11) would effect a technical amendment to the analysis of chapter 843 of title 10, United States Code, to reflect the repeal of section 8544.

Subsection (a)(12) would repeal section 6405, the substance of which would be covered by proposed section 973.

Subsection (a)(13) would effect a technical amendment to the analysis of chapter 573 of title 10 to reflect the repeal of section 6405.

Subsection (b)(1) repeals sections 3538, 3545, 5984, 8537, and 8545 of title 10, United States Code. These sections are discussed below.

Section 3538, which authorizes offices of the Ordnance Corps to be detailed to the Geological Survey, is repealed as obsolete.

Section 3545, which requires that the cooking for enlisted members of the Army shall be superintended by the officers of the organizations to which the members belong, is repealed as unnecessary, since the objectives of the section can be achieved through administrative regulations.

Section 5984, which authorizes the detail of officers of the Navy as superintendents and instructors at military institutions and colleges, is repealed as superseded.

Section 8537, which, in general, provides that the President may detail officers of the Air Force to duty under the Secretary of Commerce in connection with the promotion of civil aviation, is repealed as superseded. The source law, the Air Commerce Act of 1926 (act of July 3, 1926, ch. 807, 44 Stat. 915) was repealed by the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), which enacted superseding law that now governs the subject matter. (See 49 U.S.C. 1342; 1343 (a)(1)-(3); 1343(i).)

Section 8545, which is the Air Force counterpart of section 3545, is repealed for the same reason noted above for the repeal of the latter section.

Subsection (b)(2) would effect a technical amendment in the analysis of chapter 343 of title 10, United States Code, to reflect the repeal of sections 3538 and 3545.

Subsection (b)(3) would effect a technical amendment in the analysis of chapter 553 of title 10 to reflect the repeal of section 5984.

Subsection (b)(4) would effect a technical amendment in the analysis of chapter 843 of title 10, United States Code, to reflect the repeal of sections 8537 and 8545.

SECTION 5. RANK AND COMMAND

Subsection (a)(1)(A) would add two new sections to chapter 43. These are discussed below.

Proposed new section 747 would incorporate provisions of present sections 3576, 5954, and 8576, and would, in addition, extend the provisions of the revised section to include officers of the Navy. As rewritten, the section would provide that when different commands of the Army, Navy, Air Force, and Marine Corps join or serve together, the officer highest in rank among all on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President.

Proposed new section 749 would combine the present provisions of sections 3578 and 8578, which govern the Army and Air Force, respectively, and extend their applicability. The sections, which are in effect identical, at present provide that when two or more commissioned officers of the service concerned of the same grade, who are otherwise eligible to command, are on duty in the same area, field, command, or organization, the President may assign the command without regard to rank. The new section 749 would make this rule applicable: (a) on an intraservice basis, for the Army, Navy, Air

Force, and Marine Corps [subsec. (a)]; and (b) on an interservice basis, when officers of two or more of the services are on duty at the same place [subsec. (b)].

Subsection (a)(1)(B) would effect a technical amendment in the analysis of chapter 43 to reflect the addition of new sections 747 and 749.

Subsection (a)(2) would repeal those sections of title 10, United States Code, which are incorporated in the new sections 747 and 749.

Subsection (a)(3) would effect a technical amendment in the analysis of chapter 345 to reflect the repeal of sections 3576 and 3578.

Subsection (a)(4) would effect a technical amendment to the analysis of chapter 551 to reflect the repeal of section 5954.

Subsection (a)(5) would effect a technical amendment in the analysis of chapter 845 to reflect the repeal of sections 8576 and 8578.

Subsection (b)(1) would repeal sections 5941, 5950, and 7953 which are discussed below.

Section 5941, which provides that the President may prescribe regulations governing the assignment of officers to command fleets, subdivisions of fleets, and vessels, is repealed as unnecessary, since section 121 of title 10, United States Code, authorizes the President to prescribe regulations to carry out his functions, powers, and duties under title 10.

Section 5950, which provides that the commanding officer of a vessel may not be required to perform the duties of an officer in the Supply Corps, is repealed as no longer required.

Section 5953, which governs the detailing of an officer of the line of the Navy to serve as the executive officer of a vessel or a naval station, and prescribes the relative rank and the authority of an officer so detailed, is repealed, since the objectives of the section can be achieved by administrative regulations.

Subsection (b)(2) effects a technical amendment in the analysis of chapter 551 to reflect the repeal of sections 5941, 5950, and 5953.

SECTION 6. MISCELLANEOUS PROHIBITIONS AND PENALTIES

Subsection (a)(1) would revise section 971 by redesignating it as subsection (a) and by adding a new subsection (b). The new subsection would incorporate the substance of, and be substituted for, present sections 3682, 6116, and 8682 pertainings to service credit of officers of the Army, the Navy and Marine Corps, and the Air Force who served as cadets at the U.S. Military Academy or the Air Force Academy or as midshipmen at the Naval Academy after certain dates.

Subsection (a)(2) would repeal sections 3682, 6116, and 8682.

Subsections (a)(3), (4), and (5) would effect technical amendments in the analyses of chapters 353, 559, and 853 to reflect the repeal of sections 3682, 6116, and 8682.

Subsection (a)(6) would add a new section 974 to chapter 49, "Civilian employment: enlisted members." The new section 974 is a consolidation of the substance presently contained in sections 3635 and 8635 (enlisted members: restriction on civilian employment), and 6114 (civilian employment: enlisted members), which apply to the Army, the Air Force, and the Navy and Marine Corps, respectively. Section 974 would be a common statute of these provisions to restrict civilian employment of enlisted members on active duty with the

Armed Forces when such employment would interfere with the employment of qualified local civilians.

Subsection (a)(7) would repeal sections 3635, 6114, and 8635.

Subsections (a)(8), (9), and (10) would effect technical amendments in the analyses of chapters 349, 559, and 849 to reflect the repeal of sections 3635, 6114, and 8635.

SECTION 7. MISCELLANEOUS RIGHTS AND BENEFITS

Subsection (a)(1) would add a new clause (36) to section 101 defining "dependent," in the case of female members. The definition replaces those provisions currently in sections 3685, 6033, and 8685.

Subsection (a)(2) would add new section 1040 "replacement of certificate of discharge" to chapter 53. The proposed new section 1040 would be a common statute consolidating the substance of sections 3693 and 8693 which authorize the Secretaries of the Army and the Air Force, respectively, to replace certain discharge certificates. There is no similar provision currently covering Navy.

Subsection (a)(3) would repeal sections 3685, 3693, 6033, 8685, and 8693, the substance of which would be incorporated in proposed sections 101(36) and 1040, above.

Subsections (a)(4), (5), and (6) would effect technical amendments in the analyses of chapters 353, 555, and 853 to reflect the repeal of sections 3685, 3693, 6033, 8685, and 8693.

Subsection (b)(1) would repeal archaic sections 3631, 3637, 3690, 6158, 8631, 8637, and 8690.

The rest of subsection (b) would effect technical amendments in the analyses of chapters 349, 353, 561, 849, and 853 to reflect the repeal of sections 3631, 3637, 3690, 6158, 8631, 8637, and 8690.

SECTION 8. THE UNIFORM

Subsection (1)(A) would amend chapter 45 of title 10, United States Code ("The Uniform"), as indicated below.

Subsection (1)(A) would insert a new section 771a. The purpose of the amendment is to combined, and restate in a single section, the existing provisions of sections 3612, 6297, and 8612 of title 10, United States Code, which govern the disposition of the exterior articles of uniform that were issued to an enlisted member, and remain in his possession: (a) in the case of an enlisted member of the Army, Navy, Air Force, or Marine Corps who is discharged; and (b) in the case of an enlisted member of the Army National Guard or of the Air National Guard who has been called into Federal service, and is released from that service. The respective subsections of the proposed section 771a are discussed below.

Subsection (a) provides, in general, that in the case of an enlisted member of the Army, Navy, Air Force, or Marine Corps who is honorably discharged, such articles, except those that he may wear to his home, shall be retained for military use.

Subsections (b)(1) and (b)(2) require the retention of all such articles, for military use, in the case of a member of the Army, Navy, Air Force, or Marine Corps who is discharged otherwise than honorably but provide further that, under such regulations as the Secretary concerned prescribed, the individual concerned may be issued

a suit of civilian outer clothing and an overcoat when necessary, both to cost not more than \$30.

Subsection (b)(3), which restates existing law governing the Navy and Marine Corps and extends the provisions thereof to enlisted members of the Army and Air Force, provides that any such member who would be otherwise without funds to meet his immediate needs may be paid an amount, fixed by the Secretary concerned, of not more than \$25.

Subsection (c) provides that, in the case of a member of the Army National Guard or the Air National Guard, such articles shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the jurisdiction of whose Army or Air National Guard the individual is a member.

Subsection (1)(B) would effect a technical amendment in the analysis of the chapter to reflect the addition of the new section 771a.

Subsection (2) would repeal chapters 347 and 847, thus effecting the repeal of sections 3612 and 8612 which are restated in the new section 771a. The repeal would, in addition, cover present sections 3611 and 8611 which provide, respectively, that the President may prescribe the uniform of the Army and the Air Force. The latter sections are considered unnecessary in view of fact that 10 U.S.C. 121 authorizes the President to prescribe regulations to carry out his functions, powers, and duties under title 10.

Subsection (3) would repeal section 6297 which is incorporated in the new section 771a.

Subsection (4) would effect a technical amendment in chapter 569 of title 10, United States Code, to reflect the repeal of section 6297.

Subsection (5) would effect technical amendments in the chapter analysis of subtitle B and the chapter analysis of part II of subtitle B, respectively, to reflect the repeal of chapter 347.

Subsection (6) would effect technical amendments in the chapter analysis of subtitle D and the chapter analysis of part II of subtitle D, respectively, to reflect the repeal of chapter 847.

DEPARTMENTAL RECOMMENDATION

The letter dated January 10, 1967, from the then General Counsel of the Department of Defense that is printed below and made a part of this report shows that enactment of this bill is recommended by the Department of Defense and that the Bureau of the Budget has no objection to it.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., January 10, 1967.

Hon. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is forwarded herewith a draft of legislation to amend title 10, United States Code, to simplify laws relating to members of the Army, Navy, Air Force, and Marine Corps, and for other purposes.

This proposal is part of the Department of Defense legislative program for the 90th Congress and the Bureau of the Budget advises that, from the standpoint of the administration's program, there is

no objection to the presentation of this proposal for the consideration of the Congress.

Enactment of this proposal will represent additional progress in improving and making more uniform the personnel administration rules and procedures of the several services with consequent benefits to both the Nation and individual members of the military services. Accordingly, it is urged that this proposal be given consideration by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the attached legislation is to provide a degree of simplification and clarification in title 10 of the United States Code by (1) eliminating, where feasible, many of the variations in the services' personnel rules now stipulated in law; (2) supplanting the several service laws, so eliminated, with common statutory provisions applicable uniformly to all the military services; and (3) repealing other separate service personnel laws which have become inapplicable and unnecessary with the passage of time.

Historically, many of the personnel laws embodied in the service subtitles of title 10 predate the establishment of the Committee on Armed Services in 1946, and the enactment of the National Security Act in 1947, which established the Department of Defense. Personnel rules and procedures, which had their inception in legislation which was responsive primarily to the needs of and enacted separately for a single military department, have tended to be preserved in law and to create public misunderstanding of personnel administration in the Armed Forces. Consequently, the enactment of this legislative proposal will also serve to facilitate the public's understanding by eliminating divergent personnel practices among the military services in areas where there is no identifiable need for difference and by consolidating uniform Department of Defense personnel rules and procedure under a single subtitle in title 10. Many instances, current practice is, in fact, uniform among the services, despite differences in laws.

The legislative proposal affects most areas of personnel administration and involves, more specifically, the areas of active duty, enlistments, discharges and separations, special appointments, rank and command, miscellaneous prohibitions and penalties, miscellaneous rights and benefits, and the uniform. Typical of the individual proposals forwarded herewith are the following:

(a) A proposal for a uniform provision to extend the period of active service of any member of the military services for the duration of a war and 6 months thereafter. This proposal would merely restate present law applicable to the Army and Air Force and extend the provisions to the Navy and Marine Corps which now have no similar statute.

(b) A proposal to establish standard periods of enlistment for all of the military services. An enlistment for the duration of a person's minority is not now authorized in the Army and Air Force but is in the Navy and Marine Corps. Enlistments for a period of 5 years are not authorized in the Navy and Marine Corps but are in the Army and Air Force.

(c) A proposal to establish age 17 as the minimum age for male enlistments. While, as a matter of policy, males under age 17 are not accepted for enlistment, technically, current law permits the

enlistment into the naval service of a male at least 14 years of age if he had the consent of his parents or guardian.

(d) A proposal which would restate existing Navy and Marine Corps law governing the early discharge of regular enlisted members and extend the applicability of these provisions to members of the Army and Air Force.

This legislative proposal is not intended to eliminate justifiable divergencies in service personnel practices, but it does represent a forward step in the evolutionary process of standardizing service procedures wherever feasible. It does not involve new concepts nor major substantive changes in current law. The substance of the existing separate personnel laws to be eliminated from the service subtitles will be retained in the substitute uniform provisions proposed for subtitle A—"General Military Law."

Enactment of this proposal would result in no increase in budgetary requirements of the Department of Defense.

Sincerely,

PAUL C. WARNKE.

CHANGES IN EXISTING LAW

House Report 868 accompanying H.R. 8547, 90th Congress, first session, shows in parallel columns the provisions of existing law that would be amended or repealed and the text of the bill as reported. Because of the availability of this comparison, the committee considers that the cost of reprinting it in this report would be disproportionate to its usefulness.

○